

Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

Commission Approves Changing the Agency Disclosure Statement and Implementing a "Consumer Guide to Agency Relationships"

The Commission has received the recommendations from the agency task force and has begun the process of changing the agency disclosure regulation. The disclosure form and model policies being proposed in our regulation package have already been approved by the Commission to use as alternate forms. Keep in mind that these forms are NOT final and are subject to change during the regulatory process. Also, you can read more about the entire regulation package under the "Comments from the Chair" on page 2.

Recently, General Counsel Lee Harris traveled around the state to introduce the new alternate forms. She visited Lexington, Northern Kentucky, Louisville, Bowling Green and Owensboro. Attendees were given three (3) hours of law credit for attending the seminar. Many companies and brokers have already begun using the alternate forms.

Under the proposed regulation, the first document to be presented to the consumer will be the "Consumer Guide to Agency Relationships." Brokers may use the Commission's

model brochures and add their own company logos and contact information to them. Brokers may print them in the form they choose - with color, as flyers, etc. The agents must ask the consumer to sign the document, acknowledging receipt of it. Although the model brochures can be changed, the Agency Disclosure Statement cannot be changed without prior approval from the Commission.

When using the approved alternate Agency Disclosure Statement, licensees need to have the consumer sign the form when the buyer is making an offer and when the seller is reviewing that offer. This is different than the current agency disclosure regulation. Under the proposal, there is one form for buyers and one form for sellers.

For a complete explanation of the alternate forms and model policies, please logon to the Commission's website. The model policies and forms can be downloaded.

Please feel free to call or e-mail the Legal Staff if you have any questions about these new forms.

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EDUCATION SURVEY ON PAGES 8 & 9

Your input is needed! Please mail in your response.



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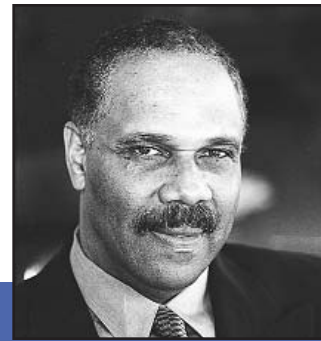
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Comments from the Chair

by: **Ron Smith,**
Chair



The Commission has proposed a regulation package, which was filed with the Legislative Research Commission on May 15, 2006. The package includes several proposed changes to the Commission's current regulations. Keep in mind that these regulations are simply being proposed. If you would like to comment on any of these proposed changes, you can mail us your comments in writing or you may appear at the Public Hearing on June 29, 2006 at 1:30 p.m. at the Holiday Inn-Hurstbourne in Louisville, KY. If you plan on appearing at the public hearing, you must inform the Commission in writing by June 22, 2006.

A new section is being proposed to 201 KAR 11:105, which would allow licensees to advertise the listings of another real estate company as long as the licensee has obtained the listing broker's consent and as long as the advertisement contains the complete name of the other real estate company. We have had many licensees request this change in order to allow more flexibility in promoting listed property, as they currently do through Internet advertising.

The next change will be to 201 KAR 11:220, the Commission's errors and omissions insurance regulation. The changes proposed will allow licensees more flexibility when shopping for outside coverage.

The change to 201 KAR 11:250 proposes to require that any agreement for compensation from a licensee to his or her client or customer shall be in writing.

Two changes under 201 KAR 11:250 are being proposed to the Seller's Disclosure of Property Condition Form. The Purpose of Statement section is being amended to encourage buyers to obtain their own home inspection since the Seller's Disclosure form is not a warranty by the seller. There is also a new question being added regarding pets in the home.

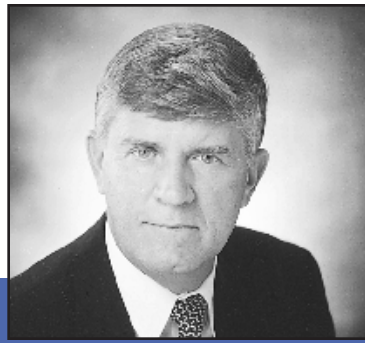
The Agency Disclosure regulation, 201 KAR 11:400, is being dramatically amended. The Commission is proposing model policies which will be given to consumers. Brokers may amend the model policies so that they conform with their company's agency policies. There will also be two new Agency Disclosure Statements, one for the buyer and one for the seller. The model policies and the two new forms have already been approved as alternate forms by the Commission and can be found on our website.

The proposed change to 201 KAR 11:430 will allow applicants for licensure to use another provider, other than the FBI, for their criminal background check as long as the provider is approved by the Commission. This will give applicants more options when selecting a criminal background check provider.

We anticipate that these changes will be passed and approved by the end of the year. We will keep you informed in future newsletters, and we will have full updates on our website. As always, please call the Commission office if you have any questions.

From the Director's Desk

by: Norman E. Brown,
Executive Director



As a former educator and principal, I know that education is the key to any successful profession. A strong educational program is essential for every industry.

The current pre-license requirements for sales and broker licensees have been in effect since July 1, 1980, and the only new requirement since then has been a brokerage management course for broker candidates. The Commission recently appointed a task force to study our pre-licensing as well as our continuing education laws. The task force consists of Commissioner Ken Perry, Commissioner Lois Ann Disponett, Education Director Linda Poliskie, licensees Gale Fulton, Kevin Farris, Kathy McGann, Mike Parker, Pat Pride, Mary Jo Schuerman and Ron Hughes, Executive Officer Meg Manning, Instructors: Bev McCormick, Joyce Sterling and Sandye Hackney, KAR Director Susie Helm, KREEF Director Anetha Dunn, Attorney Ginny Lawson and myself.

An "Education Overview" document was distributed prior to the first task force meeting to provide a history of the education requirements and to familiarize the task force members with the process for approval of schools, classes and instructors. After meeting, the group felt that all levels of education should be reviewed and that the level of professionalism and knowledge of licensees should be increased. The group also agreed that with the changing business models, many licensees starting out are not as prepared during their first year of licensure with the practical skills nec-

essary to practice real estate. Brokerages are larger and many people work out of their homes, thus not allowing for as much broker-to-agent training. The group suggested requiring new licensees to take a post-licensing course, designed to teach practical skills, such as contract and form completion. The group talked about this being required during the first year of licensure.

There were also suggestions to increase and diversify the continuing education courses that are offered each year, to require more general education courses of anyone wanting to be licensed as a principal broker and to require a broker-specific continuing education course.

It was also noted that Kentucky has one of the lowest continuing education requirements in the nation. The group discussed possibly increasing the number of hours from six (6) to twelve (12).

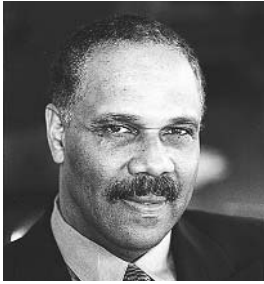
Above all, instructors are the key to any successful education program. The Commission has seen a decrease in new real estate instructors. If you are interested in applying to become an instructor, please contact Linda Poliskie at the Commission.

Of course, the task force needs your input to make the best decisions. To this end, we have included a survey in this newsletter. Please take the time to fill it out, add your ideas and send it back to the address on the survey. The more responses we get, the better programs we can offer and the better changes we can make. We would greatly appreciate your comments.

Gathering Property Information

There are many aspects of a property that must be noted in a listing or advertisement. In many cases, the listing agent or broker obtains this information from sources other than the seller. For example, sewer information may be obtained from the local sewer district. If a licensee contacts the correct source for such information and is, for some reason, given erroneous information, the Commission will not hold the licensee responsible for the other source's error. For example, in some areas, residents receive a sewer bill even if they have not actually paid to be hooked up to the sewer lines. If a licensee were to contact that sewer district and receive information that a particular property was on sewers, and this information turned out to be incorrect, the Commission would not hold the licensee in violation. The key to correctly seeking such information is to contact the proper authority, obtain written documentation of the response, maintain a copy of that response in your official file for the transaction and note the source of the information on any listing.

Commissioner's Corner



Ron Smith



Arvel J. McMahan



Michael Plummer



Lois Ann Disponett



Ken Perry

Important Information for Licensees

Address Changes

Two addresses are maintained in the KREC database for all principal brokers--one address for the firm and the other for the broker's residence. If the firm address is also the residence address, be sure to indicate that fact on any written requests to change the address, so that the corrections can be made in both places. All mailings from the Commission to principal brokers will be sent to the firm address, with the exception of continuing education reminders, which are mailed to the broker's residence.

Changes of Residence Address

Licensees are required to notify the Commission in writing, within ten days of a change in residence address. There is no charge for a residence address change.

Releasing Licensees from the Brokerage

When a sales associate requests that his or her license be released and returned to the Commission or when the Commission requests the return of an associate's license, the principal broker is required to comply with that request *immediately*. Brokers may not hold up or refuse to release a license because the associate owes money to the firm, has office keys, or for any other reason. When a release is requested, regardless of who makes the request, the principal broker must comply and release the license immediately.

Brokers Carrying Private E & O Insurance Coverage

All principal brokers who carry private E & O insurance must furnish the Commission with an updated private coverage certification **BEFORE** the old E & O policy expires. You will receive a reminder from the Commission. Failure to provide a valid certificate will result in the cancellation of all licensees for the

firm. An individual cannot maintain an active license unless the Commission has proof of E & O coverage.

E & O Premium Quotes for Basic Coverage

Pro-rated E & O premium quotes can be obtained on the KREC website or by calling the Commission. To find the appropriate premium, first check with the principal broker to find out whether the OFFICE where you will be working is located in the city limits or is in the county. Each municipality, city or county has the authority to charge a local tax on the E & O premium. If the city or municipality does not appear on the city chart, then check the county chart for the appropriate county rate and add this amount to the other fees that you will be paying.

Use Your Full Legal Name, Please!!!

When reporting transfers or changes, residence address changes, registering for continuing education classes, or when calling the Commission for information that we must look up in our database, please be sure to give us your full legal name (the one that appears on your license) and some other identifying information (residence address, principal broker's name, birth date, etc.), so that we can ensure that we are looking up the correct licensee.

Speeding up the Licensing Process!!

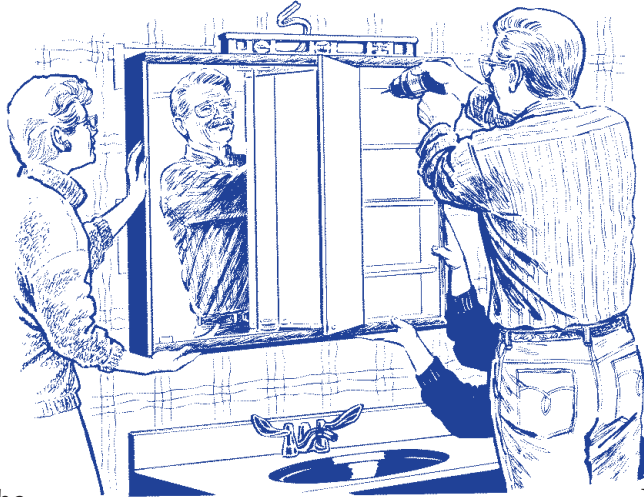
If you want to speed up the licensing process, please put all documents and fees that are required to complete your portion of the transfer, change, or license application together in one envelope to forward to the Commission. We cannot process changes or applications until all of the required documents have been received. Transactions that do not include all required documents or fees will be returned for correction.

Removing Items From A Property

By: Lee B. Harris, General Counsel

The Commission has received numerous calls lately about items being removed from a property. The debate centers on whether the item was a fixture, and therefore must be left with the property, or whether the item was considered personal property, and therefore may be taken from the property.

A fixture is something that has been permanently affixed to the real estate, such that removal of the item would leave physical damage to the property. The easiest way to eliminate any such dispute is to include in the purchase contract any and all items that the buyer would like to remain with the property. That way, the seller has contracted to leave the



items. The buyer cannot rely upon the fact that the item was mentioned in the listing agreement or in the advertisements, as all aspects of the deal are negotiable. If an item is not included in the purchase contract and it is taken, the parties and/or the courts (or other dispute resolution professionals) will have to assess on a case-by-case basis whether the item was indeed permanently affixed to the property. Sometimes, this is a very difficult assessment.

Items that have been recently questioned are bathroom mirrors, stereo speakers, a gazebo, a basketball goal, an oven and an alarm system. When in doubt, include the item in the purchase contract!

The Commission will have a new testing vendor beginning on July 5, 2006. Promissor, Inc. was awarded a two-year contract to be the testing administrator for all Kentucky licensee candidates. The current vendor, Applied Measurement Professionals, will administer the real estate exam until June 30, 2006. There will be two testing sites in Louisville and two in Lexington. There are also several convenient locations in border states. Please check the Commission's website for Promissor's contact information, schedule and locations.

VACANT LAND DISCLOSURE STATEMENT

The Commission has approved a Vacant Land Disclosure Statement. This form is not mandatory; however, we encourage licensees to utilize this form when dealing with vacant land.

The form is located under the licensee-restricted forms and contracts section of the Commission's website. You will need a user i.d. and password to obtain the form. The user i.d. is "get" and the password is "forms" (all of which must be in lower case letters).



Disciplinary Actions



Veda Bishop-Whitis

(Eubank) Case Nos. 05-0030, 05-0195, 05-0134, 05-0226, 05-0287, 05-0308 and 06-0016

Violation: Ms. Bishop-Whitis stipulated to a violation of KRS 324.160(4)(h), KRS 324.160(4)(v) and KRS 324.160(4)(u) for violating KRS 324.111. Ms. Bishop-Whitis admits that she failed to timely remit money belonging to others that came into her possession on numerous occasions. She also admits that she engaged in conduct which constitutes improper, fraudulent or dishonest dealing and that she has had insufficient funds in and bounced checks from her escrow account on numerous occasions.

Disposition: Ms. Bishop-Whitis agreed to voluntarily surrender her license to the Commission and to pay restitution to all of the parties to whom she currently owes money.

Linda Maxwell-Doran

(Sparta) Case No. 04-0119

Violation: Ms. Maxwell-Doran stipulated to an unintentional violation of KRS 324.160(4)(b); KRS 324.160(4)(u), specifically, 201 KAR 11:121, and KRS 324.160(4)(v), resulting from a chain of events centering on her unintentional failure to deal honestly and properly with her seller-client and two buyers' agents when she engaged in conduct that unintentionally resulted in nondisclosure to them of the full extent of a termite infestation problem.

Disposition: Ms. Maxwell-Doran agreed to voluntarily and permanently surrender her license

to the Commission.

David E. Sims

(Bowling Green) Case No. 05-0251

Violation: Mr. Sims stipulated to a violation of KRS 324.160(4)(v) for improper conduct for verbally assaulting a client who was attempting to rent a home represented by Mr. Sims.

Disposition: Mr. Sims agreed to attend six (6) hours of continuing education, in addition to any hours already required by law. He also agreed to issue a formal apology to the complainant in this matter and to accept a formal reprimand from the Commission. Mr. Sims agreed to pay restitution to the complainant in the amount of two hundred and seventy-five dollars (\$275.00).

Connie Maxwell

(Miamitown, OH) Case No. 04-0297

Violation: Ms. Maxwell stipulated to a violation of KRS 324.160(4)(u), specifically, 201 KAR 11:400 and KRS 324.160(4)(n), (s) and (v) for failing to disclose on an agency disclosure form, in a dual agency transaction, her personal relationship with the seller; for unintentionally failing to respond to a Commission investigation in a timely manner; for acting as an agent and undisclosed principal; and for dealing with her buyer clients in an improper and dishonest-but not fraudulent-manner.

Disposition: Ms. Maxwell agreed to pay to the complainants in this matter the sum of five

thousand five hundred dollars (\$5,500.00), pursuant to terms and conditions that have been set out in a separate written and executed agreement between Ms. Maxwell and the complainants. In addition, Ms. Maxwell's license shall be suspended for three (3) years.

Paula Layne

(Prestonsburg) Case No. 04-0139

Violation: Ms. Layne stipulated that, due to a family emergency, she unintentionally violated KRS 324.160 (4)(u), specifically, 201 KAR 11:045 and KRS 324.330(1), when she inadvertently failed to ensure timely acceptance of a buyer's offer to purchase property that was advertised by her real estate company, Action Team Realty. She also inadvertently failed to timely notify the Commission of her change of address.

Disposition: Ms. Layne agreed to attend six (6) additional hours of continuing education in law courses, in addition to any hours already required by law. She also agreed to remove all of her signs for Action Team Realty and to immediately cease all real estate brokerage under that company name.

Mary Gonda

(Shelbyville) Case No. 05-0200

Violation: Ms. Gonda stipulated to a violation of KRS 324.160(4) for violating KRS 324.117 for having a sales associate's name in the firm name, without the required experience.

Disposition: Ms. Gonda agreed

Disciplinary Actions

Continued from Page 6

to attend three (3) hours of continuing education, in addition to any hours already required by law. She also agreed to ensure that the name of the property management company with which she works is in compliance with KRS 324.117.

Lynn Caudill

(Franklin) Case No. 05-0182

Violation: Mr. Caudill stipulated to a violation of KRS 324.160(4)(u) for violating 201 KAR 11:121 for failing to act in accordance with a fiduciary standard towards a client by failing to properly explain the process for listing a property, which led to confusion on the part of the sellers.

Disposition: Mr. Caudill agreed to complete twelve (12) hours of continuing education, in addition to hours already required by law, and to accept a formal reprimand. He also agreed to pay a fine in the amount of five hundred dollars (\$500.00).

Bobby J. Pruitt

(Mount Washington) Case No. 05-0184

Violation: Mr. Pruitt stipulated to a violation of KRS 324.160(4)(v) for improper conduct, for indicating that an earnest money deposit check had been mailed to the listing agent, when in fact the buyer had never produced the check, and for delaying in telling the listing agent

that the buyer did not intend to purchase the property.

Disposition: Mr. Pruitt agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00), and to accept a formal reprimand from the Commission. Mr. Pruitt also agreed to attend six (6) hours of continuing education in law, in addition to any hours already required by law.

Julie Robinson

(Paris) Case No. 05-0248

Violation: Ms. Robinson stipulated to a violation of KRS 324.160(4)(u) for violating KRS 324.117, for false, misleading or deceptive advertising for advertising specific parameters, such as number of bedrooms and bathrooms, type of electrical and heating systems, monthly payments, etc. for properties that were not identified or currently available for sale.

Disposition: Ms. Robinson agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00), and to cease advertising homes for sale that do not exist as current listings or available properties.

Edward A. Puckett

(Ledbetter) Case No. 05-0207

Violation: Mr. Puckett stipulated to an unintentional violation of KRS 324.160(4)(b) for inadvertently failing to disclose to his buyer-clients, in a dual agency transaction, that the cost to insure the property in question could be higher than expected because insurance-claim proceeds that his seller-clients had received to cover the cost of replacing the hail-damaged roof did not result in the roof being replaced as the funds had been "absconded."

Disposition: Mr. Puckett agreed

to pay a fine in the amount of five hundred dollars (\$500.00). He also agreed to successfully complete six (6) hours of continuing education in law, in addition to any hours already required by law.

Daniel Harpe

(Nicholasville) Case No. 05-0182

Violation: During the investigation, the complainant and Mr. Harpe entered into their own resolution as outlined below.

Disposition: Mr. Harpe agrees to place two thousand two hundred and fifty dollars (\$2,250.00) into the escrow account of The Gibson Company. This represents money owed to the complainant by Mr. Harpe, based upon a property management agreement. The money will be removed from escrow and paid to the complainant.

Mary Lou Gilbert

(Erlanger) Case No. 05-0121

Violation: The violation was based on related issues to Case No. 04-0121, which was published in a previous newsletter.

Disposition: Ms. Gilbert agreed to attend six (6) hours of continuing education, in addition to any hours already required by law, and to accept a formal reprimand.

Yvonne Boyd

(Dry Ridge) Case No. 05-0121

Violation: The violation was based on issues related to Case No. 04-0121, which was published in a previous newsletter.

Disposition: Ms. Boyd agreed to attend six (6) hours of continuing education, in addition to any hours already required by law, and to accept a formal reprimand.

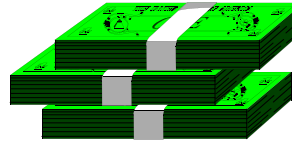
Referral Fees

As you may know, Kentucky's laws on inducements and rebates changed quite substantially last year. However, these law changes did not in any way affect referral fees to unlicensed individuals. Referring and offering to refer is considered real estate brokerage activity under KRS 324.010(1) and is perhaps one of the most misunderstood sections of the law. Referral fees may only be paid from one broker to another broker, in exchange for a referral of a client or customer. Real estate licensees may not pay a referral fee to an unlicensed individual in exchange for a referral of a potential client. An out-of-state broker may refer a client or customer to a Kentucky broker in exchange for a referral fee. Lately, the Commission has received numerous advertisements in which the licensee offers a referral fee to past clients for referrals. This is not legal under Kentucky law.



Financing Provisions

Under 201 KAR 11:250, license law requires the financing provisions to be set out in the purchase contract. Recently, the Commission has seen several contracts that state "To Be Determined" or "TBD" across the financing contingency section. This is problematic for several reasons. First, this is not in compliance with license law, as it does not set forth the manner of financing or whether the financing will be underwritten by the seller or a commercial lending institution, as required by the regulation. In addition, this type of language gives the buyer absolutely no protection for obtaining the going rate. In essence, under this language, there is no financing contingency because the buyer would be required to accept any interest rate and terms.

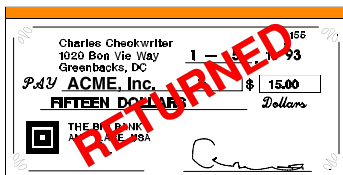


The Commission will again have a booth at the Kentucky State Fair in the South Wing from August 17-27, 2006. Please stop by our booth and say hello.

REMINDER

The Commission does not accept cash for payments. Please remit either a personal check or money order when submitting payments to the Commission.

Also, please ensure that you have sufficient funds in your account. The Commission will assess a \$100.00 fee for all checks returned for insufficient funds.



FORECLOSURE ISSUES

There has been an increase in the number of properties that are being foreclosed upon in this state. Once a seller has been notified that their property is in foreclosure, they may be inclined to list the property for sale to stave off those proceedings. A listing agent does not have to disclose the seller's bargaining position up-front; however, once it becomes clear that the seller's financial status is going to affect the buyer's ability to purchase the property, the material information must be disclosed.



Earnest Money Deposits

The Commission receives numerous calls regarding earnest money deposits. The earnest money deposit is frequently referred to as the "escrow deposit." It is the buyer's agent's responsibility to make sure that the earnest money agreed to in the purchase contract is collected and deposited or delivered to the seller's agent for deposit. If the buyer, for whatever reason, does not come through with the earnest money as promised, the buyer's agent must immediately notify the seller or the seller's agent.

If the buyer is going to pay the deposit at some time in the future, the buyer's agent should make sure that this fact is reflected in the purchase contract. Also, whenever a broker is notified that the buyer's earnest money deposit

has been returned for insufficient funds, the broker must immediately notify the seller, if the seller is his client, or the seller's agent, if the seller is represented by another company. It does not matter if



the broker is representing only the buyer or is in dual agency, this information must be immediately disclosed.

Remember, the broker may release escrow money only under three circumstances: 1) performance on the contract; 2) a mutual release

signed by both parties; or 3) a court order. There is no law that prevents a broker from holding escrow money in his or her escrow account for a number of years, if the parties cannot agree and will not go to court.

KRS 324.111(6) allows the broker holding the earnest money to send a letter by certified mail to both parties at their last known addresses, outlining which party will receive the money and giving both parties sixty (60) days to sign a release or file litigation claiming the money. If the broker does not receive notice of a release or a court filing, the broker may release the money to the party outlined in the letter once the sixty (60) day period has expired. There is a sample release letter on the Commission's website.

Just a little humor . . .

A client bought a new home and the broker wanted to send flowers for the occasion. They arrived at the home and the owner read the card. It said "Rest in Peace."

The owner was angry and called the florist to complain. After he had told the florist of the obvious mistake and how angry he was, the florist said: "Sir, I'm really sorry for the mistake, but rather than getting angry you should imagine this: somewhere there is a funeral taking place today, and they have flowers with a note saying, 'Congratulations on your new home.'"

Under Kentucky's new laws, licensees may now offer inducements and rebates to their clients and customers, so long as the items are disclosed in writing. Under some circumstances, such as certain loan programs, a buyer is not able to accept any type of additional payments, like rebates, or they will not qualify for the loan program to which they are applying. Licensees may need to be cautious, therefore, to include a disclaimer or to explain these possible limitations when offering a rebate or inducement to a buyer.

REMINDER

When an agent is dealing with a third-party seller, such as HUD or another government agency, and that seller refuses to sign the disclosure form, the agent should sign the waiver on the back of the form, indicating that the seller refuses to complete the form.

The Commission is proposing to change the Seller's Disclosure of Property Condition and the Agency Disclosure Forms. We anticipate that this change will take place around the end of the year. Please do not order an excess supply of these forms. We suggest only having enough forms to last you for the rest of this year. We will notify you of the progress of the proposed new forms in the next newsletter.

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The Kentucky Real Estate Commission
will be closed on:

July 4, 2006
(Independence Day)
&
September 4, 2006
(Labor Day)